

1993

Perkins v. Perkins : Petition for Rehearing

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Paul S. Felt; Ray, Quinney & Nebeker; Attorney for Appellee.

David A. McPhie; McPhie & Nelson; Attorney for Appellant.

Recommended Citation

Legal Brief, *Perkins v. Perkins*, No. 930684 (Utah Court of Appeals, 1993).

https://digitalcommons.law.byu.edu/byu_ca1/5593

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

JERRI S. PERKINS, nka
JERRI S. JAMES,

Plaintiff and Appellee,

vs.

LARRY R. PERKINS,

Defendant and Appellant.

)
)
)PETITION FOR HEARING OR
)RECONSIDERATION OF
)MEMORANDUM DECISION
)
)
)
)Priority No. 15
)
)Appellate Case No. 930684-CA
)
)

This is an appeal from the Third District Court, the Honorable Judge Leslie A. Lewis.

Paul S. Felt (A1055)
Attorney for Appellee
RAY, QUINNEY & NEBEKER
79 South Main, #400
Salt Lake City, Utah 84145-1500
(801) 532-1500

David A. McPhie (2216)
Attorney for Appellant
McPHIE & NELSON
2105 E. Murray-Holladay Rd.
Salt Lake City, Utah 84117
(801) 278-3700

UTAH COURT OF APPEALS

F

UTAH
DOC
KFU
50
.A10
DOC.

930684

FILED

MAY 02 1995

COURT OF APPEALS

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
JURISDICTION	1
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	5
1. DID THE LOWER COURT MAKE A FINDING THAT THE MONEY TRANSFERRED OVERSEAS, IN AUGUST OF 1991, HAD A VALUE OF \$870,000.00 AT THE TIME OF TRIAL.	5
2. COULD THE DISTRICT COURT HAVE MADE A FINDING, AT THE TIME OF TRIAL, CONCERNING THE VALUE OF THE MONEY TRANSFERRED OVERSEAS IN AUGUST 1991.	8
3. CAN THE COURT AT THE TIME OF A REMAND HEARING MAKE A NEW FINDING WITHOUT <u>NEW EVIDENCE</u>	9
CONCLUSION	11
RELIEF SOUGHT	11
CERTIFICATE OF GOOD FAITH	12
MAILING CERTIFICATE	12
Appendix A Court's Findings of Fact and Conclusions of Law.	13

TABLE OF AUTHORITIES

Acton v. Deliran, 737 P.2d 996 (Utah 1987)	7
Berger v. Berger, 713 P.2d 695 (Utah 1985)	7
Gardner v. Gardner, 748 P.2d 1076, 1081 (Utah 1988)	7
Kinkella v. Baugh, 660 P.2d 233 (Utah 1983).	7
Lee v. Lee, 744 P.2d 1378 (Utah Ct. App. 1987).	7
Morgan v. Morgan, 795 P.2d 684 (Utah Ct. App. 1990).	7
Rappeleye v. Rappeleye, 855 P.2d 260 (Utah Ct. App. 1993).	7
Roberts v. Roberts, 835 P.2d 193 (Utah Ct. App. 1992).	7
Smith v. Smith, 726 P.2d 423 (Utah 1986)	7

BEFORE THE UTAH COURT OF APPEALS

JURISDICTION

Jurisdiction is pursuant to Rule 3(a) of the Utah Rules of Appellate Procedure. This is an Appeal from a final order of the Third District Court.

STATEMENT OF THE ISSUES

- 1. DID THE LOWER COURT MAKE A FINDING THAT THE MONEY TRANSFERRED OVERSEAS, IN AUGUST OF 1991, HAD A VALUE OF \$870,000.00 AT THE TIME OF TRIAL.**
- 2. COULD THE DISTRICT COURT HAVE MADE A FINDING, AT THE TIME OF TRIAL, CONCERNING THE VALUE OF THE MONEY TRANSFERRED OVERSEAS IN AUGUST 1991.**
- 3. CAN THE COURT AT THE TIME OF A REMAND HEARING MAKE A NEW FINDING WITHOUT NEW EVIDENCE.**

COMES NOW, the Appellant, Larry R. Perkins and moves this Honorable Court for reconsideration of the Court's Memorandum Decision, or in the alternative requests the Court grant him oral argument in the matter. This Motion is brought pursuant to Rule 35 of the Utah Rules of Appellant Procedure concerning petitions for re-hearing.

STATEMENT OF THE CASE

The Appellant, Larry R. Perkins appealed to this Court a final Order in the form of a Decree of Divorce, rendered by the Honorable Judge Leslie A. Lewis of the Third Judicial District Court below. His brief on appeal was filed the 31st of January, 1994, the Respondent filed a responsive brief, and the Appellant filed a reply.

This Court had the matter under advisement, and the parties awaited an invitation for oral

argument. The Court apparently decided the case on its own Motion, pursuant to Rule 31 of the Utah Rules of Appellant Procedure apparently deciding that the matter had uncomplicated factual issues, or uncomplicated issues of law as described in Rule 31(b) Utah Rule of Appellate Procedure. The Memorandum Decision was filed, and mailed to counsel, April 13, 1995.

In its memorandum decision that Court stated that "the trial Court identified as marital property \$870,000.00 received from the sale of apartments." The Court further stated in its memorandum decision "based on its findings, the trial Court was able to identify marital assets of at least \$1,405,806.00."

The distinction the Appellant wishes to point out is the difference between the value of a marital asset eighteen (18) months before trial and the court's inability to make a finding concerning the same money at the time of trial. The trial court did identify \$870,000 in marital property sent overseas to pay a mortgage obligation eighteen (18) months before trial. The lower court however, specifically did not make a finding as to the value of any money overseas at the time of trial, because it could not. The Respondent had the burden of establishing that value at trial, and did not attempt to do so. The lower court correctly concluded that it could not make a finding as to the value of any overseas asset.

This Court agreed with the Appellant that the Findings of Fact published by the Court below did not support the outcome, and remanded the matter for trial. This Court however, in footnote number one to its decision, invites the District Court, if it cannot support its current disproportionate award with new findings, to simply let Mrs. Perkins retain the domestic assets previously awarded her, and give her a smaller fractional share of the overseas assets, upon which a value has never been placed. Such a suggestions, as currently contained in footnote one

of the memorandum decision, compounds, rather than solves, the problem.

The Appellant asserts in this petition for re-hearing, or reconsideration that the Court has overlooked or misapprehended the nature of the dispute, the facts surrounding what the lower Court actually found, and did not find, and the law involved.

The Appellant asserts that the lower Court did not value the marital estate at \$1,405,806.00, and specifically that the Trial Court could not, and did not attach any value to any overseas assets. Appellant asserts that the lower court correctly did not do so in that there was no evidence presented at the time of trial as to those assets' value, if any.

The Appellant agrees and accepts all other portions of the Court's memorandum decision.

The Appellant requests that the Court reconsider this, and reissue an amended memorandum decision, or in the alternative, allow the parties oral argument in the matter.

SUMMARY OF THE ARGUMENT

The District Court absolutely did not, and could not, make a finding at the time of trial as to the value of the money earlier transferred to the Singapore Corporation. The Court made a finding that the \$870,000.00 was transferred overseas in August of 1991. The appellant's testimony, as is contained in the transcript, was that this money was sent to Yen Yang Corporation, a Singapore Corporation, to pay off the mortgage owed on the Royal Garden Apartments. Documents were produced at trial showing that the money had been borrowed to buy the apartments, a promissory note signed, and that a subsequent mortgage was recorded in Salt Lake County, securing the lender corporation. This testimony was unrefuted.

In paragraph nineteen (19) of its Findings of Fact, the lower court found that the appellant's testimony was lacking in credibility, that he controlled the Singapore corporation, and that the court could not put a value on the corporation for lack of evidence. The court found that the reason that there was a lack of evidence was because the Appellant was hiding assets. The court make no finding as to what efforts the Plaintiff/Respondent made to discover the truth about this issue, or what the Appellant had done to hide them. The lower court simply found that the Appellant was not a credible witness.

The appellant vigorously denied any ownership or control in the Singapore corporation. Without regard for the reasons why, there was simply no evidence at trial to support a finding concerning the value of any alleged overseas asset of the parties.

The lower court did not make a finding that the Singapore corporation had \$870,000.00, or had any value at the time of trial, or that the Appellant had gotten any of the money. There was absolutely no evidence presented at the time of trial as to what the Company's financial condition was, or if it existed. The Respondent, before trial, sought and obtained two (2) extensions of time in which to do overseas discovery, and then did none. This is uncontroverted. The Plaintiff/Respondent, instead relief on her hope that the lower court, if it disbelieved the Appellant, and found him to be a liar, would be tempted to, and would in fact, exceed its authority, and attempt to punish him for lying, by granting the Respondent a disproportionate share of the estate.

This Court, in its memorandum decision, has suggested to the District Court that if no new findings can be made, it can simply rest on its initial findings, but take away from the Plaintiff her one-half share of foreign assets, and that this will solve the problem. This will not

solve the problem. Without new evidence, which will support findings concerning the value of overseas assets at the time of trial, the trial Court will be in no better position to make adequate findings at a remand hearing, than it was originally.

ARGUMENT

I. DID THE LOWER COURT MAKE A FINDING THAT THE MONEY TRANSFERRED OVERSEAS, IN AUGUST OF 1991, HAD A VALUE OF \$870,000.00 AT THE TIME OF TRIAL?

The answer to this question is clearly no. The Court's findings on this issue were contained in Findings no. eighteen (18) and nineteen (19) which stated "Sale of the Royal Garden. In August 1991 Defendant sold his interest in the Royal Garden Apartments for \$1,000,000.00 and transferred \$870,000.00 overseas to Singapore." Finding No. 19 states that

Defendant's Overseas Assets. Although the Defendant testified that he had no overseas assets and that the \$870,000.00 in proceeds from the sale of the Royal Garden Apartments was transferred by him to Singapore to pay a debt he owed Yen Yang Shipping Company, the Court finds Defendant's testimony to be lacking in credibility on this point. The Court carefully listed to the totality of the testimony, considered Defendant's appearance and demeanor to arrive at this finding. The Court heard and considered the testimony of Kay Jones McDonald concerning Defendant's relationship with Yen Yang Shipping Company. The Court finds that Ms. McDonald was a very credible witness and clearly testified that Yen Yang was his based on her observations in Singapore when she was with the Defendant. The Court has also considered Exhibit 40 which it finds significant in arriving at this finding.

From documents introduced into evidence, (including Exhibit 40), and from the testimony of witnesses at trial the Court finds that the Defendant currently has undetermined but substantial assets overseas which are under his control and which he is hiding from Plaintiff and this Court. Defendant's denial

of the existence of these assets is not credible. The Court further rules that the Plaintiff should be awarded one-half of the Defendant's overseas assets, the exact dollar amount to be determined when and if such information becomes available.

[Emphasis added]

Three things are undeniable with regard to the above two referred to findings:

1. The trial Court thought the Appellant was a liar;
2. The lower Court believed that the \$870,000.00 mortgage debt owed on the Apartments, was owed to a Company in Singapore which Appellant controlled; and,
3. That there was no evidence before the Court upon which it could base a finding as to the then value, that is, the value at the time of trial of the previously transferred \$870,000. For this reason, the lower Court awarded the Respondent one-half of the unvalued, unquantifiable assets.

Appellant denied that he had any interest or control in the Singapore Company to which the \$870,000.00 mortgage was paid. A former girlfriend of Larry Perkins, Kay Jones McDonald testified at trial that she had been to Singapore with Larry on a trip, and that she could tell that Larry had control of the Singapore Corporation. The Court disbelieved Larry Perkins, and believed Kay Jones McDonald.

The Appellant's point in this Motion for re-hearing or reconsideration of the memorandum decision is that Judge Lewis knew that there was no evidence before her as to the value of those monies on the date of trial. Not a shred of evidence was presented concerning the mortgage monies and what had happened to them after being paid to the Singapore Company to retire the mortgage debt the parties had owed. The lower Court was correctly concerned that it knew nothing of the mortgage company's debt structure, investors identities, shares outstanding, financial condition, cash on hand, or any other information which would allow it

to put a value on this corporation the Appellant was found to control.

The lower Court, obviously suspected that there could be a large amount of money sitting overseas over which the Defendant/Appellant had control, but there simply no basis upon which the Court could value it. The fact that the asset had a dollar value of \$870,000.00 eighteen (18) months earlier, in August, 1991, did not help the lower Court in making a finding as to its value some eighteen months later, in February, 1993 when the trial took place.

This Court's memorandum decision, in footnote one, suggests that the problem of the Court's findings can be remedied by simply taking away one-half of the overseas assets from Respondent, and otherwise leave the property distribution as it is. This does not solve the fundamental problem of valuation of assets at the time of trial, and relieves the Plaintiff/Respondent of her legal burden of establishing value.

The Trial Court's disbelief of Appellant's position does not abrogate the requirements of Rule 52 of the Utah Rules of Civil Procedure, or the case law requiring specific findings as to value. Appellant asserts that the rule of law is that the marital assets must have their value established at the time of trial.¹ The court cannot, as a matter of law, give one party unidentified assets of no known value, to make up for the award to the other party of assets of known value. The trial court cannot guesstimate, or adopt an "who cares" attitude, about this rule of law because it finds a witness to be lacking in credibility. There must be specific

¹ *Acton v. Deliran*, 737 P.2d 996 (Utah 1987); *Berger v. Berger*, 713 P.2d 695 (Utah 1985); *Gardner v. Gardner*, 748 P.2d 1076, 1081 (Utah 1988); *Kinkella v. Baugh*, 660 P.2d 233 (Utah 1983); *Lee v. Lee*, 744 P.2d 1378 (Utah Ct. App. 1987); *Morgan v. Morgan*, 795 P.2d 684 (Utah Ct. App. 1990); *Rappeleye v. Rappeleye*, 855 P.2d 260 (Utah Ct. App. 1993); *Roberts v. Roberts*, 835 P.2d 193 (Utah Ct. App. 1992); *Smith v. Smith*, 726 P.2d 423 (Utah 1986).

findings as to value, and evidence to support them. The Plaintiff/Respondent simply did not meet her burden in this regard.

II. COULD THE DISTRICT COURT HAVE MADE A FINDING, AT THE TIME OF TRIAL, CONCERNING THE VALUE OF THE MONEY TRANSFERRED OVERSEAS IN AUGUST 1991?

The Trial Court could not have made a finding regarding the value of the property held overseas. It could not do this because there was no evidence presented at trial regarding the value of overseas assets.

The only evidence presented at trial was that in August 1991 the Defendant sold an apartment complex in Salt Lake City, and sent \$870,000 of the proceeds to pay off a recorded mortgage indebtedness. The evidence on this point was not disputed. What was disputed was whether or not the Appellant had control over the Singapore corporation holding the debt. Regardless of who controlled or owned that company, no evidence was ever presented as to the value of that company.

Assuming, arguendo, that the Appellant did control the Singapore corporation, that does not mean that he owned the company, or that it was worth \$870,000 at the time of trial. Value cannot be determined without an examination of the assets, debts, accounts payable, and/or accounts receivable of a company. The trial court did not do this assessment as there was absolutely no evidence presented regarding those aspects of the “company.”

The lower court understood that just because the Appellant’s ex-girlfriend said he controlled the company did not mean that he could take money from the company in any manner

he wished. Assuming that the Appellant did control the company, there is a substantial difference between having control of a company's operations, and having the ability to take assets from it, which could leave it with necessary liquid assets to meet its obligations.

The lower court could not make a finding as to the value at trial because the Respondent failed to meet her burden of providing any evidence on that issue.

To allow the trial court, on remand, to simply give the Appellant back his former wife's one-half share of overseas assets, without making specific findings as to the value of those assets, is to suggest to the lower court that it is free to arbitrarily, and capriciously, make unsupported assumptions about the value of the Singapore corporation. This is the equivalent of saying the Appellant lied at trial, therefore, the requirements of Rule 52, U.R.C.P., and the case law, are suspended. Such an approach is not an appropriate remedy for perceived perjury.

This is contrary to established Utah law which requires court's to make specific findings as to value, and not base the distribution of property on the trial court's impressions of the parties.

III. CAN THE COURT AT THE TIME OF A REMAND HEARING MAKE A NEW FINDING WITHOUT NEW EVIDENCE.

The trial court cannot make any new findings on remand because there was not sufficient evidence adduced at trial to allow the trial court to make those necessary findings. The burden was on the Plaintiff/Respondent to produce the necessary evidence. She failed to do this. Not only did the Plaintiff/Respondent fail to produce the evidence, she also failed to attempt to do any overseas discovery, not even a phone call. This fact was undisputed. The Plaintiff was

granted two discovery extensions to perform overseas discovery. Even then she failed to do any discovery.

In order to give the trial court the necessary evidence, the Plaintiff/Respondent must fulfill the obligation placed in her by law to conduct discovery and present the evidence found at a remand hearing.

A possible solution to this dilemma is to divide equally the known assets, also known as the domestic assets. Then also divide equally any overseas assets. In this manner, the marital estate would be divided equally. Neither party would bear the risk of a mistaken assumption about value. This court could further allow the Plaintiff/Respondent a new discovery period prior to a remand hearing in order to ensure that she is not in any way prohibited from discovering all possible information.

Given these protections, the court would do all it could to give the Plaintiff/Respondent her one-half share of the marital estate and still require that she meet her burden as to the evidence. It would also grant to the Appellant his equitable share of the marital property and not cut him off from receiving one-half of the overall marital estate just because the trial court took and instant dislike to him.

It is better that the Respondent be allowed to do discovery prior to hearing on remand, even though untimely, and another chance to meet her burden, than to base a property distribution on suspicion and doubt, as opposed to evidence.

CONCLUSION

The suggestions made to the lower court in footnote number one (1) of its memorandum decision will not solve the problem. Awarding the Appellant all the overseas assets of any, will not correct the flaws in the lower court's findings.

Without additional evidence, there will still be no basis to put a value on or make a finding concerning any overseas asset. As long as that asset remains unvalued as of the time of trial, no distribution, other than an equal distribution, can be supported as a matter of law.

RELIEF SOUGHT

Appellant requests that, as a solution to this problem, the Plaintiff/Respondent be given additional time to do overseas discovery prior to hearing on remand. If the Respondent still cannot produce sufficient evidence to support a finding as to value of overseas assets, the lower court should be directed to distribute the marital estate as follows:

1. One-half of known domestic assets to each party;
2. One-half of unknown, unquantifiable, assets to each party.

RESPECTFULLY SUBMITTED this 2nd day of May, 1995.

David A. McPhie

CERTIFICATE OF GOOD FAITH

Counsel for the Appellant hereby certifies that this petition is presented in good faith, and not for purposes of delay.

DATED this 2nd day of May, 1995.

David A. McPhie

CERTIFICATE OF HAND DELIVERY

I hereby certify that I cause to be hand-delivered to Paul Felt, two copies of the Appellant's Petition for Reconsideration or Hearing, at his office located at Suite #400, #79 South Main Street, Salt Lake City, Utah

DATED this 2nd day of May, 1995.

David A. McPhie

of the memorandum decision, compounds, rather than solves, the problem.

The Appellant asserts in this petition for re-hearing, or reconsideration that the Court has overlooked or misapprehended the nature of the dispute, the facts surrounding what the lower Court actually found, and did not find, and the law involved.

The Appellant asserts that the lower Court did not value the marital estate at \$1,405,806.00, and specifically that the Trial Court could not, and did not attach any value to any overseas assets. Appellant asserts that the lower court correctly did not do so in that there was no evidence presented at the time of trial as to those assets' value, if any.

The Appellant agrees and accepts all other portions of the Court's memorandum decision.

The Appellant requests that the Court reconsider this, and reissue an amended memorandum decision, or in the alternative, allow the parties oral argument in the matter.

SUMMARY OF THE ARGUMENT

The District Court absolutely did not, and could not, make a finding at the time of trial as to the value of the money earlier transferred to the Singapore Corporation. The Court made a finding that the \$870,000.00 was transferred overseas in August of 1991. The appellant's testimony, as is contained in the transcript, was that this money was sent to Yen Yang Corporation, a Singapore Corporation, to pay off the mortgage owed on the Royal Garden Apartments. Documents were produced at trial showing that the money had been borrowed to buy the apartments, a promissory note signed, and that a subsequent mortgage was recorded in Salt Lake County, securing the lender corporation. This testimony was unrefuted.

In paragraph nineteen (19) of its Findings of Fact, the lower court found that the appellant's testimony was lacking in credibility, that he controlled the Singapore corporation, and that the court could not put a value on the corporation for lack of evidence. The court found that the reason that there was a lack of evidence was because the Appellant was hiding assets. The court make no finding as to what efforts the Plaintiff/Respondent made to discover the truth about this issue, or what the Appellant had done to hide them. The lower court simply found that the Appellant was not a credible witness.

The appellant vigorously denied any ownership or control in the Singapore corporation. Without regard for the reasons why, there was simply no evidence at trial to support a finding concerning the value of any alleged overseas asset of the parties.

The lower court did not make a finding that the Singapore corporation had \$870,000.00, or had any value at the time of trial, or that the Appellant had gotten any of the money. There was absolutely no evidence presented at the time of trial as to what the Company's financial condition was, or if it existed. The Respondent, before trial, sought and obtained two (2) extensions of time in which to do overseas discovery, and then did none. This is uncontroverted. The Plaintiff/Respondent, instead relief on her hope that the lower court, if it disbelieved the Appellant, and found him to be a liar, would be tempted to, and would in fact, exceed its authority, and attempt to punish him for lying, by granting the Respondent a disproportionate share of the estate.

This Court, in its memorandum decision, has suggested to the District Court that if no new findings can be made, it can simply rest on its initial findings, but take away from the Plaintiff her one-half share of foreign assets, and that this will solve the problem. This will not

solve the problem. Without new evidence, which will support findings concerning the value of overseas assets at the time of trial, the trial Court will be in no better position to make adequate findings at a remand hearing, than it was originally.

ARGUMENT

I. DID THE LOWER COURT MAKE A FINDING THAT THE MONEY TRANSFERRED OVERSEAS, IN AUGUST OF 1991, HAD A VALUE OF \$870,000.00 AT THE TIME OF TRIAL?

The answer to this question is clearly no. The Court's findings on this issue were contained in Findings no. eighteen (18) and nineteen (19) which stated "Sale of the Royal Garden. In August 1991 Defendant sold his interest in the Royal Garden Apartments for \$1,000,000.00 and transferred \$870,000.00 overseas to Singapore." Finding No. 19 states that

Defendant's Overseas Assets. Although the Defendant testified that he had no overseas assets and that the \$870,000.00 in proceeds from the sale of the Royal Garden Apartments was transferred by him to Singapore to pay a debt he owed Yen Yang Shipping Company, the Court finds Defendant's testimony to be lacking in credibility on this point. The Court carefully listed to the totality of the testimony, considered Defendant's appearance and demeanor to arrive at this finding. The Court heard and considered the testimony of Kay Jones McDonald concerning Defendant's relationship with Yen Yang Shipping Company. The Court finds that Ms. McDonald was a very credible witness and clearly testified that Yen Yang was his based on her observations in Singapore when she was with the Defendant. The Court has also considered Exhibit 40 which it finds significant in arriving at this finding.

From documents introduced into evidence, (including Exhibit 40), and from the testimony of witnesses at trial the Court finds that the Defendant currently has undetermined but substantial assets overseas which are under his control and which he is hiding from Plaintiff and this Court. Defendant's denial

of the existence of these assets is not credible. The Court further rules that the Plaintiff should be awarded one-half of the Defendant's overseas assets, the exact dollar amount to be determined when and if such information becomes available. [Emphasis added]

Three things are undeniable with regard to the above two referred to findings:

1. The trial Court thought the Appellant was a liar;
2. The lower Court believed that the \$870,000.00 mortgage debt owed on the Apartments, was owed to a Company in Singapore which Appellant controlled; and,
3. That there was no evidence before the Court upon which it could base a finding as to the then value, that is, the value at the time of trial of the previously transferred \$870,000. For this reason, the lower Court awarded the Respondent one-half of the unvalued, unquantifiable assets.

Appellant denied that he had any interest or control in the Singapore Company to which the \$870,000.00 mortgage was paid. A former girlfriend of Larry Perkins, Kay Jones McDonald testified at trial that she had been to Singapore with Larry on a trip, and that she could tell that Larry had control of the Singapore Corporation. The Court disbelieved Larry Perkins, and believed Kay Jones McDonald.

The Appellant's point in this Motion for re-hearing or reconsideration of the memorandum decision is that Judge Lewis knew that there was no evidence before her as to the value of those monies on the date of trial. Not a shred of evidence was presented concerning the mortgage monies and what had happened to them after being paid to the Singapore Company to retire the mortgage debt the parties had owed. The lower Court was correctly concerned that it knew nothing of the mortgage company's debt structure, investors identities, shares outstanding, financial condition, cash on hand, or any other information which would allow it

to put a value on this corporation the Appellant was found to control.

The lower Court, obviously suspected that there could be a large amount of money sitting overseas over which the Defendant/Appellant had control, but there simply no basis upon which the Court could value it. The fact that the asset had a dollar value of \$870,000.00 eighteen (18) months earlier, in August, 1991, did not help the lower Court in making a finding as to its value some eighteen months later, in February, 1993 when the trial took place.

This Court's memorandum decision, in footnote one, suggests that the problem of the Court's findings can be remedied by simply taking away one-half of the overseas assets from Respondent, and otherwise leave the property distribution as it is. This does not solve the fundamental problem of valuation of assets at the time of trial, and relieves the Plaintiff/Respondent of her legal burden of establishing value.

The Trial Court's disbelief of Appellant's position does not abrogate the requirements of Rule 52 of the Utah Rules of Civil Procedure, or the case law requiring specific findings as to value. Appellant asserts that the rule of law is that the marital assets must have their value established at the time of trial.¹ The court cannot, as a matter of law, give one party unidentified assets of no known value, to make up for the award to the other party of assets of known value. The trial court cannot guesstimate, or adopt an "who cares" attitude, about this rule of law because it finds a witness to be lacking in credibility. There must be specific

¹ *Acton v. Deliran*, 737 P.2d 996 (Utah 1987); *Berger v. Berger*, 713 P.2d 695 (Utah 1985); *Gardner v. Gardner*, 748 P.2d 1076, 1081 (Utah 1988); *Kinkella v. Baugh*, 660 P.2d 233 (Utah 1983); *Lee v. Lee*, 744 P.2d 1378 (Utah Ct. App. 1987); *Morgan v. Morgan*, 795 P.2d 684 (Utah Ct. App. 1990); *Rappeleye v. Rappeleye*, 855 P.2d 260 (Utah Ct. App. 1993); *Roberts v. Roberts*, 835 P.2d 193 (Utah Ct. App. 1992); *Smith v. Smith*, 726 P.2d 423 (Utah 1986).

findings as to value, and evidence to support them. The Plaintiff/Respondent simply did not meet her burden in this regard.

II. COULD THE DISTRICT COURT HAVE MADE A FINDING, AT THE TIME OF TRIAL, CONCERNING THE VALUE OF THE MONEY TRANSFERRED OVERSEAS IN AUGUST 1991?

The Trial Court could not have made a finding regarding the value of the property held overseas. It could not do this because there was no evidence presented at trial regarding the value of overseas assets.

The only evidence presented at trial was that in August 1991 the Defendant sold an apartment complex in Salt Lake City, and sent \$870,000 of the proceeds to pay off a recorded mortgage indebtedness. The evidence on this point was not disputed. What was disputed was whether or not the Appellant had control over the Singapore corporation holding the debt. Regardless of who controlled or owned that company, no evidence was ever presented as to the value of that company.

Assuming, arguendo, that the Appellant did control the Singapore corporation, that does not mean that he owned the company, or that it was worth \$870,000 at the time of trial. Value cannot be determined without an examination of the assets, debts, accounts payable, and/or accounts receivable of a company. The trial court did not do this assessment as there was absolutely no evidence presented regarding those aspects of the “company.”

The lower court understood that just because the Appellant’s ex-girlfriend said he controlled the company did not mean that he could take money from the company in any manner

he wished. Assuming that the Appellant did control the company, there is a substantial difference between having control of a company's operations, and having the ability to take assets from it, which could leave it with necessary liquid assets to meet its obligations.

The lower court could not make a finding as to the value at trial because the Respondent failed to meet her burden of providing any evidence on that issue.

To allow the trial court, on remand, to simply give the Appellant back his former wife's one-half share of overseas assets, without making specific findings as to the value of those assets, is to suggest to the lower court that it is free to arbitrarily, and capriciously, make unsupported assumptions about the value of the Singapore corporation. This is the equivalent of saying the Appellant lied at trial, therefore, the requirements of Rule 52, U.R.C.P., and the case law, are suspended. Such an approach is not an appropriate remedy for perceived perjury.

This is contrary to established Utah law which requires court's to make specific findings as to value, and not base the distribution of property on the trial court's impressions of the parties.

III. CAN THE COURT AT THE TIME OF A REMAND HEARING MAKE A NEW FINDING WITHOUT NEW EVIDENCE.

The trial court cannot make any new findings on remand because there was not sufficient evidence adduced at trial to allow the trial court to make those necessary findings. The burden was on the Plaintiff/Respondent to produce the necessary evidence. She failed to do this. Not only did the Plaintiff/Respondent fail to produce the evidence, she also failed to attempt to do any overseas discovery, not even a phone call. This fact was undisputed. The Plaintiff was

granted two discovery extensions to perform overseas discovery. Even then she failed to do any discovery.

In order to give the trial court the necessary evidence, the Plaintiff/Respondent must fulfill the obligation placed in her by law to conduct discovery and present the evidence found at a remand hearing.

A possible solution to this dilemma is to divide equally the known assets, also known as the domestic assets. Then also divide equally any overseas assets. In this manner, the marital estate would be divided equally. Neither party would bear the risk of a mistaken assumption about value. This court could further allow the Plaintiff/Respondent a new discovery period prior to a remand hearing in order to ensure that she is not in any way prohibited from discovering all possible information.

Given these protections, the court would do all it could to give the Plaintiff/Respondent her one-half share of the marital estate and still require that she meet her burden as to the evidence. It would also grant to the Appellant his equitable share of the marital property and not cut him off from receiving one-half of the overall marital estate just because the trial court took and instant dislike to him.

It is better that the Respondent be allowed to do discovery prior to hearing on remand, even though untimely, and another chance to meet her burden, than to base a property distribution on suspicion and doubt, as opposed to evidence.

CONCLUSION

The suggestions made to the lower court in footnote number one (1) of its memorandum decision will not solve the problem. Awarding the Appellant all the overseas assets of any, will not correct the flaws in the lower court's findings.

Without additional evidence, there will still be no basis to put a value on or make a finding concerning any overseas asset. As long as that asset remains unvalued as of the time of trial, no distribution, other than an equal distribution, can be supported as a matter of law.

RELIEF SOUGHT

Appellant requests that, as a solution to this problem, the Plaintiff/Respondent be given additional time to do overseas discovery prior to hearing on remand. If the Respondent still cannot produce sufficient evidence to support a finding as to value of overseas assets, the lower court should be directed to distribute the marital estate as follows:

1. One-half of known domestic assets to each party;
2. One-half of unknown, unquantifiable, assets to each party.

RESPECTFULLY SUBMITTED this 2nd day of May, 1995.



David A. McPhie

CERTIFICATE OF GOOD FAITH

Counsel for the Appellant hereby certifies that this petition is presented in good faith, and not for purposes of delay.

DATED this 2nd day of May, 1995.



David A. McPhie

CERTIFICATE OF HAND DELIVERY

I hereby certify that I cause to be hand-delivered to Paul Felt, two copies of the Appellant's Petition for Reconsideration or Hearing, at his office located at Suite #400, #79 South Main Street, Salt Lake City, Utah

DATED this 2nd day of May, 1995.



David A. McPhie

EXHIBIT A


FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

COURT'S
JERRI S. PERKINS, : FINDINGS OF FACT AND
Plaintiff, : CONCLUSIONS OF LAW
vs. : CASE NO. 914902826
LARRY R. PERKINS, :
Defendant. :

The above-entitled matter came on for trial on February 2, 3, and 4, and March 16, 1993 pursuant to notice, before the Honorable Leslie A. Lewis. Plaintiff was present in person and represented by counsel, Paul S. Felt. Defendant was present in person and represented by counsel, David A. McPhie. Each party made opening statements, and the Court then heard testimony and received exhibits and heard closing arguments of counsel. The Court now having fully considered the matter and reviewed the Exhibits received, its notes, and the proposed Findings from plaintiff and defendant, and good cause appearing, the Court now makes and enters the following:

FINDINGS OF FACT

 1. Residency. Plaintiff and defendant were each residents of Salt Lake County, Utah for more than three months before the filing of this action.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

COURT'S
JERRI S. PERKINS, : FINDINGS OF FACT AND
Plaintiff, : CONCLUSIONS OF LAW
vs. : CASE NO. 914902826
LARRY R. PERKINS, :
Defendant. :

The above-entitled matter came on for trial on February 2, 3, and 4, and March 16, 1993 pursuant to notice, before the Honorable Leslie A. Lewis. Plaintiff was present in person and represented by counsel, Paul S. Felt. Defendant was present in person and represented by counsel, David A. McPhie. Each party made opening statements, and the Court then heard testimony and received exhibits and heard closing arguments of counsel. The Court now having fully considered the matter and reviewed the Exhibits received, its notes, and the proposed Findings from plaintiff and defendant, and good cause appearing, the Court now makes and enters the following:

FINDINGS OF FACT

BR 1. Residency. Plaintiff and defendant were each residents of Salt Lake County, Utah for more than three months before the filing of this action.

2. Marriage. Plaintiff and defendant were wife and husband, having been married in Salt Lake City, Utah, on June 3, 1969.

3. Divorce. On February 4, 1993, the Court bifurcated this matter and granted a Decree of Divorce reserving all other issues for the trial. The plaintiff was awarded a Decree of Divorce from the defendant on the grounds of irreconcilable differences. This Decree of Divorce reserving all other issues was signed by the Honorable Leslie A. Lewis on February 9, 1993.

4. Custody and Visitation. The parties have three minor children born as issue of their marriage, to wit: , Jason R. Perkins, age 17; Patricia L. Perkins (Tricia), age 16; and Tawna Perkins, age 10. The parties have stipulated that plaintiff is a fit and proper person to be awarded the care, custody and control of Jason and Tawna and that defendant is to have reasonable rights of visitation at all reasonable times and places provided that defendant shall give plaintiff reasonable notice prior to the exercise of such visitation rights and that the Court would meet with Tricia concerning custody and make a custody decision concerning Tricia that is binding upon the parties. Subject to the notice requirements, defendant's visitation rights are to at least meet those in the standard Third District Court schedule. The Court met with Tricia on the 7th day of April, 1993, and Tricia volunteered the following information:

"I kinda want to be both places. . . I'd like to be with my siblings more. I want to be able to be flexible. I want my Mom to get full child support because I may want to live with her fulltime soon. I can communicate better with my Mom. But I love them both."

The Court finds after meeting with Tricia and considering all that she said to the Court, her age, and her demeanor, that she has no clear preference to live full-time with either parent at this point and desires to be able to spend time on a flexible basis with both parents. The Court finds that the parties have been able to effectively communicate and handle scheduling issues during the pendency of this action concerning Tricia. The Court therefore awards joint legal custody to the parties and physical custody to the plaintiff, subject to a liberal and flexible visitation schedule with the defendant, structured by plaintiff, defendant and Tricia. The Court in reaching this decision considered the placement of the siblings and the fact that the plaintiff has been the primary care-giver for the majority of Tricia's life and has exhibited an ability to communicate and parent effectively and a willingness to work with the defendant to effectuate a liberal, fair visitation schedule.

5. Defendant's Education. The Court finds that defendant is highly educated with a bachelor's degree in accounting and

economics and a master's degree, and has received extensive work-related education and experience in business, finance and banking.

6. Defendant's Past Employment. The Court finds that defendant has been employed in the past in the fields of overseas banking, shipping and construction and has developed expertise in structuring investments and financial transactions in these areas. In the 1970's defendant was employed overseas in Indonesia and Greece and also made profitable personal investments in certain foreign companies. Plaintiff and defendant and their children lived overseas during most of the time defendant was employed by the First National Bank of Chicago in Indonesia and Greece and later by certain companies in Greece.

7. The Parties' Return to the United States. In 1970, defendant and plaintiff returned to the United States to live. At that time, defendant left a substantial but undetermined amount of money and other assets overseas when he moved back to the United States. After his return to the United States, defendant continued to have access and control over said overseas assets. The Court finds defendant has always had exclusive control over the overseas assets.

8. Purchase of Marital Residence. Upon their return to the United States, the parties purchased a house in Salt Lake City on

4503 South Adonis Drive, Salt Lake City, Utah ("Adonis Drive House") which became the parties' residence. In 1990, the house was owned free and clear of any liens. In the early 1980's, the house was put solely in plaintiff's name.

9. Parties' Lifestyle. During the 1980's and 1990, the parties and their family lived a very comfortable lifestyle enjoying an upper middle class standard of living which included adequate money for the necessities of life, and luxuries and included overseas and domestic trips, a large house in Olympus Cove, and enrichment opportunities for the children and parties. The Court found plaintiff very credible on this issue and did not find defendant credible on this issue. This lifestyle utilized only defendant's income and plaintiff's in-house contributions of time and energy to run the house and care for the family.

10. Defendant's Employment During the 1980's. During the 1980's defendant was employed primarily as the controller of Sales West Marketing. He also worked for periods of time as a consultant to other companies and had a financial interest in several other companies including Ionian Equipment Company, a Liberian corporation, Perperez Maritime Company, Ramona Enterprises and Apex Equipment Company.

11. Purchase of the Royal Garden Apartments. In the early 1980's defendant purchased the Royal Garden Apartments in Salt Lake City, Utah. During the 1980's these apartments created a positive yearly cash flow which defendant utilized for family maintenance and spending, as well as his own business investments. Defendant filled out a financial statement for First Interstate Bank in April 1987 which showed that the Royal Garden Apartments was providing him a cash flow of \$40,000 per year. The Court further finds that the income tax returns filed by the parties from 1985 to 1992 and which were prepared exclusively by defendant may not accurately reflect all of the money which was available to the defendant and his family for their use. The parties' income tax returns are the only source document available from which to determine the amount of money available to defendant and his family.

12. Defendant's Investments in the 1980's. During the 1980's defendant purchased and sold various pieces of real estate including an office building, and said investments were profitable in amounts which exceeded \$150,000. Defendant received and utilized the profit on these investments.

13. Plaintiff's Skills and Activities During the 1980's. Early in the marriage plaintiff was employed for a limited period of time as a sales clerk at the then existing minimum wage.

Plaintiff has one to two years of college credits, but has no college degree. For the past twenty years plaintiff has been unemployed and remained unemployed during the course of the marriage at defendant's request in order to be a homemaker and to care for the parties' children, including the parties' diabetic daughter, Tawna, and to be available to travel and to move at defendant's request. In so doing, plaintiff has foregone opportunities for her own educational and career advancement. Plaintiff currently has no meaningful job skills and is presently unemployable in a job above minimum wage.

14. Defendant's Current Employment. The Court finds that defendant's income during 1992 was when he was employed as a mortgage broker for Utah First Mortgage was \$39,590.54. Defendant continues to be employed in this capacity and testified that his income in the immediate future should be similar to his 1992 income.

15. Plaintiff's Current Income. The Court finds that plaintiff earned no wages or income during the last twenty years and only has a monthly unearned income if the dividends from the Merrill Lynch account number 222-0000-016182 and the IBM stock account number 14885-68530 are attributed to her. These dividends currently total approximately \$232 per month. Plaintiff's income is further enhanced if the monthly payments on the Royal Garden

Note of \$1,112 per month continue to be paid to plaintiff as ordered by the Court in its temporary order of support.

16. Plaintiff's Future Plans. The plaintiff has enrolled in a college nursing program and has testified she wants to obtain a degree as a registered nurse and can accomplish this by 1998. During the next five years the plaintiff has testified she will have to devote her full attention to caring for her family, including her diabetic daughter, and to her education and will not be able to be employed or have any meaningful earned income if she is to meet this goal.

17. Separation of the Parties. In April, 1991, defendant told plaintiff that he no longer loved her or desired to be married to her and the parties separated.

18. Sale of the Royal Garden Apartments. In August, 1991, defendant sold his interest in the Royal Garden Apartments for \$1 million and transferred \$870,000 overseas to Singapore.

19. Defendant's Overseas Assets. Although the defendant testified that he had no overseas assets and that the \$870,000 proceeds from the sale of the Royal Garden Apartments was transferred by him to Singapore to pay a debt he owed Yen Yang Shipping Company, the Court finds defendant's testimony to be lacking in credibility on this point. The Court carefully listened

to the totality of the testimony and considered defendant's appearance and demeanor carefully throughout to arrive at this finding.

The Court heard and considered the testimony of Kay Jones McDonald concerning defendant's relationship with Yen Yang Shipping Company. The Court finds Ms. McDonald was a very credible witness and clearly testified that "Yen Yang was his (defendant's) corporation for his own use," based upon her observations in Singapore, when she was with the defendant. The Court has also considered Exhibit 40, which it finds significant, in arriving at this finding.

From documents introduced into evidence (including Exhibit 40), and from the testimony of witnesses at the trial, the Court finds that defendant currently has undetermined but substantial assets overseas which are under his control and which he is hiding from plaintiff and this Court. Defendant's denial of the existence of these assets is not credible. The Court further rules that plaintiff should be awarded one-half of defendant's overseas assets, the exact dollar amount to be determined when and if such information becomes available.

20. Plaintiff's Needs for the Next Five Years. The Court rules that, even absent a consideration of the overseas assets, the

division of assets as set forth in these Findings of Fact and Conclusions of Law is necessary and reasonable because plaintiff and the minor children residing with her will need to spend much of the proceeds from these assets for their support and maintenance during the next five years while plaintiff is in school obtaining her nursing degree. These needs are detailed further in other paragraphs of these Findings of Fact.

21. Child Support. Child support is to be calculated pursuant to and consistent with the Utah Child Support Guidelines based upon a consideration of all three children in plaintiff's physical custody. Defendant is presently employed as a mortgage broker with Utah First Mortgage. In 1992 defendant's payroll records reflected wages of \$39,590.64 which equals \$3,299.22 per month. Additionally, defendant makes \$41 per month from a Merrill Lynch investment account for a total monthly wage of \$3,340. As previously stated, plaintiff has no earned income and if the unearned income she has been receiving under the temporary support order is attributable to her, plaintiff's gross monthly income is \$1,344. Child support is to be based upon these figures. The Court rules that based upon Section 74-45-1, the defendant should pay the sum of \$183.17 per month per child for a total of \$549.51 per month for the support of the three children. However, if

Tricia resides with the defendant for more than fifty percent of the days of any month from the date of this ruling forward, a child support adjustment shall be made pursuant to statute. The Court further rules that, pursuant to Section 15-2-1, Utah Code Ann., because of her diabetes and anticipated medical needs, the defendant is ordered to pay child support for Tawna until she reaches the age of 21 years.

22. Alimony. The Court finds that plaintiff's reasonable monthly expenses to maintain and educate herself and the two children living with her will be \$2,917 after plaintiff sells the Adonis Drive House and purchases the house which she is now renting. The Court finds that plaintiff's claimed monthly expenses as set forth in Exhibit 162 are reasonable and necessary. The Court further finds that defendant has the ability to pay the sum of \$500 per month in alimony, and this is to be paid for the next five years during which time plaintiff will be involved in education to enable her to contribute to her own needs. Thereafter, defendant is to pay plaintiff the sum of \$300 per month as permanent alimony until she remarries or cohabits. The Court further finds that plaintiff and the children will need more money per month for their support than defendant has evinced the recent ability to pay in alimony and child support, and thus it is fair

and reasonable that plaintiff be awarded a larger share of the parties' domestic assets as hereinafter set forth. The Court in determining alimony has considered plaintiff's need, defendant's ability to pay, plaintiff's limited ability to earn, the standard of living enjoyed by the parties during the marriage, defendant's significantly greater ability to increase his income in the future, given his education and work history, and the length of the marriage, as well as the other facts set forth herein.

23. The Court rules that an Order to Withhold and Deliver be issued pursuant to Utah Code Ann., Section 62-11-401, et seq., should the defendant become thirty (30) days delinquent in any of his support obligations provided herein.

24. Royal Garden Apartment Note. The Court rules that the plaintiff be awarded the proceeds of the Royal Garden Note which has a principal value of approximately \$39,434 as of February, 1993. The defendant assigned the proceeds of this Note to plaintiff after the date of separation and has consistently treated this Note as an asset belonging to plaintiff.

25. Home Equity Loan. Beginning in 1991, the parties began borrowing on a home equity line of credit against the Adonis Drive House. The Court finds that plaintiff reasonably borrowed against this line of credit because she and the children needed the money

on which to live and to pay the monthly interest on the home equity loan. The Court further finds that some of defendant's borrowings against the home equity line of credit were not reasonable or necessary. This finding includes, but is not limited to the December 19, 1992 borrowing when defendant took \$8,750 from the home equity line of credit and sent it overseas to Yen Yang Shipping Company. Thus, the Court finds that defendant, through his unjustified depletion of the home equity line of credit, has already taken an unjustifiable share of the equity from the Adonis Drive House. The home equity loan which must be paid to First Security Bank when the home is sold currently stands at \$100,724 when the interest payment for March, 1993 is included. Because the maximum loan amount the bank will allow is \$100,000, which was reached in December, 1992, plaintiff has been forced to pay interest on the loan for January of \$670.56, and February of \$613.69 out of the last monies she borrowed from the home equity account.

26. The Adonis Drive House. The house is currently subject to an earnest money agreement to be sold with a prospective closing date of March 31, 1993 at a price of \$270,000. At the time of the anticipated sale, the home equity loan of \$100,724 must be paid from the sales proceeds as well as real estate commissions totaling

\$12,200 (of which defendant will receive \$1,000), and unpaid property taxes of \$5,233, leaving an equity of approximately \$151,843. The Court finds that it is reasonable and proper based upon all of the foregoing facts and circumstances to award plaintiff seventy-five percent of the net equity from the sale of the Adonis Drive House and to award defendant twenty-five percent of said net equity.

27. West Valley House. During the marriage the parties purchased a house in West Valley City, Utah as an investment and put the house in plaintiff's name. After the parties' separation, the house was sold and the proceeds from the sale were put in an interest bearing trust account which has a present value of \$85,950.89. The Court rules that it is reasonable and proper to award plaintiff one hundred percent of the proceeds from the sale of the West Valley house.

28. Plaintiff's Bank Accounts. Plaintiff currently has approximately \$2,910 in a checking account which is the residual amount left from a \$5,000 gift from plaintiff's mother. The Court rules it is reasonable and proper that plaintiff be awarded all interest in her bank account.

29. Defendant's Bank Accounts. Defendant currently has approximately \$2,500 in his bank accounts. The Court rules it is reasonable and proper that defendant be awarded all interest in his bank account.

30. Vehicles. Plaintiff owns a 1992 Nissan Pathfinder which she purchased for \$22,000. The minor son is currently driving an old Cadillac with a value of approximately \$1,000. There is a 1968 Jaguar automobile which defendant represented in writing was owned by the plaintiff and which has the stipulated value of \$27,000. Defendant owns a 1991 Ford Explorer with a value of \$16,000. The Court rules it is reasonable and proper that plaintiff be awarded her Pathfinder and the Cadillac. The Court finds it is reasonable and proper that defendant be awarded his Ford Explorer and the Jaguar automobile, and the boat and trailer in defendant's possession, and that defendant is to pay plaintiff half the stipulated value of the Jaguar, before he can take possession of the same.

31. Insurance Policies. There are life insurance policies in existence on the life of the defendant and each of the children with the following cash values:

Defendant Larry Perkins	\$39,674
Jason Perkins	2,502
Tricia Perkins	2,405
Tawna Perkins	3,504
Lara Perkins (adult daughter)	4,294

There is no life insurance policy on the life of the plaintiff. The Court rules that the financial needs of the plaintiff and the children are such that plaintiff will need the

cash surrender values to supplement the child support and alimony awarded to plaintiff and that neither of the parties can afford to pay the premiums which will be necessary to keep the insurance policies in effect. The Court rules that it is reasonable and proper for plaintiff to be awarded the above-described life insurance policies on the lives of the defendant, Lara, Jason and Tricia so she can utilize the cash surrender value to supplement her living expenses. However, the Court rules that the life insurance on the life of the diabetic daughter, Tawna, shall be maintained by the defendant, as it will be difficult for Tawna to procure insurance on her life in the future.

32. Furniture and Personal Property. The Court approves the stipulation of the parties made at the beginning of the trial that each party shall retain the furniture, art objects and personal property now in their separate possession.

33. Health Insurance. The Court orders defendant to maintain adequate health, accident, hospitalization and dental insurance on the parties' children. Defendant is ordered to pay all deductible amounts applicable to said insurance. Plaintiff and defendant are ordered to each pay one-half of all non-covered medical and dental expenses for the children until they reach the age of 18 years and to continue such payments beyond the age of 18 years if such health

insurance can be kept in effect as to the children if they are in school. Defendant is further ordered to make available to plaintiff health insurance at his place of employment under the COBRA laws if such is available through his employment, with plaintiff to pay the premiums on her own health insurance.

34. Debts and Obligations of the Parties. The Court finds that, other than the home equity loan which will be paid out of proceeds from the sale of the Adonis Drive House, all post-separation debts and obligations should be paid by the party which incurred the same.

35. Defendant's Investments. The Court rules that the Merrill Lynch Ready Asset Account in the approximate amount of \$485, the International Holdings Account in the approximate amount of \$9,712 and the Pacific Fund A in the approximate amount of \$10,710, all of which are in defendant's name, should be awarded to defendant.

36. Defendant's Retirement. The Court rules that defendant's IRA account in the approximate amount of \$20,269 should be awarded to defendant. The plaintiff has no compensating retirement account.

37. The Children's Uniform Gift to Minors Account. During the course of their marriage, the parties established a Uniform

Gift to Minors Account in each of their children's names. The approximate amount of each account for the minor children is:

Jason Perkins	\$12,575
Tricia Perkins	17,575
Tawna Perkins	12,080

The Court rules that plaintiff shall have control over these accounts and orders defendant to do whatever is necessary to make plaintiff the custodian of said accounts. The Court further orders plaintiff to spend the funds from these accounts only for the benefit of the respective child who is the beneficiary of said account.

38. Tax Returns. The Court rules that the parties should file separate tax returns for the year 1993. Plaintiff should be entitled to claim Jason and Tawna as income tax exemptions and defendant should be entitled to claim Tricia as an income tax exemption beginning in 1993, provided he remains current on all of the obligations of alimony, child support and other support set forth herein. The parties should sign such IRS or state forms or documents as may be necessary to insure that each receives the above-specified exemptions.

39. Income Tax Liability. The Court finds because defendant prepared the parties' joint income tax returns and claimed many business deductions in an attempt to minimize taxable income and

because plaintiff had no expertise or participation in the preparation in said income tax returns other than signing her name, defendant is ordered to indemnify and hold plaintiff harmless for any past due taxes, penalties, interest or other monies which may be assessed against her by any governmental entity in connection with said joint tax returns.

40. Attorney's Fees. The Court finds that plaintiff's attorney's fees and costs for this divorce action are approximately \$28,700. This amount includes the fees from plaintiff's first attorneys, Campbell, Maack & Sessions; plaintiff's second attorney, Richard Bigelow; and plaintiff's third attorney, Paul S. Felt, as well as each attorney's supporting staff. The Court finds that plaintiff's attorneys fees and costs in the amount of \$27,800 are reasonable and necessary based upon the testimony or proffer by each of plaintiff's attorneys as to his expertise in the field of domestic relations law, his hourly fee being customary and standard in the area, the type of work performed, the need for such work and written detail of the hours spent by attorneys and staff working on the case, as well as the complex nature of this case which included understanding and tracing many of the defendant's overseas and domestic investments. The Court further finds that plaintiff has no ability to pay these attorney's fees without the award of the

assets to her as set forth in these Findings of Fact and Conclusions of Law. The Court further finds that defendant is being awarded substantial assets in this divorce and has other undisclosed foreign assets and thus has ability to assist plaintiff with payment of her attorney's fees and would be ordered to do so but for the award of the greater share of the domestic assets of the parties to plaintiff. Therefore, the Court rules that based on the distribution of the domestic marital assets, each party is ordered to pay his or her own attorney's fees and costs.

Based on the foregoing Findings of Fact, the Court now makes and enters its:

CONCLUSIONS OF LAW

1. The Court has previously awarded plaintiff a Decree of Divorce from defendant on the grounds of irreconcilable differences.

2. Custody and visitation of the parties' minor children should be awarded as set forth in Finding of Fact number 4 above.

3. Defendant should be ordered to pay child support to plaintiff as set forth in Finding of Fact number 21 above.

4. Defendant should be ordered to pay alimony to plaintiff as set forth in ~~Finding of Fact number 12 above.~~ *In court supplemental findings, paragraph #1 thereof*

5. The real and personal property and assets of the parties should be awarded as set forth in ~~Findings of Fact~~ *the court's awarded supplemental finding of the court # 4 & 5, and its original May 11th finding as contained in paragraph 28, 29, 30, 31, 32, 33, 35, 36 and 37 above.* numbers 26, 27, 28, 29, 30, 31, 32, 33, 35, 36 and 37 above.

6. The defendant should be ordered to maintain health insurance on the children of the parties and make health insurance available to plaintiff under the COBRA law as set forth in Finding of Fact number 33 above, *as supplemented by the supplemental findings paragraph # 2*

7. The plaintiff should be awarded custody and control over the Uniform Gift to Minors Accounts as set forth in Finding of Fact number 36 above. *The Uniform Gift to Minors Act money should be dealt with in accordance with the supplemental finding # 5*

8. Each party should be ordered to pay his or her own attorney's fees and costs.

9. The parties should be ordered to file separate tax returns for 1993 with claimed exemptions as set forth in Finding of Fact number 37 above.

10. The Court will seal the file, pursuant to Section 30-3-4, Utah Code Ann., upon stipulation of the parties, subsequent to entry of a final Decree.

Dated this 6th day of May, 1993.

61
LESLIE A. LEWIS
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, to the following, this 7th day of May, 1993:

Paul S. Felt
Attorney for Plaintiff
79 S. Main, Suite 400
Salt Lake City, Utah 84111

David A. McPhie
Attorney for Defendant
2105 E. Murray Holladay Road
Salt Lake City, Utah 84117

E. Matheson